

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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10-13-00

In re Application of)	
Bartholomew J. Frazzitta, et al.)	Art Unit: 2713
)	
Serial No.: 08/889,033)	Patent Examiner
)	Tung Vo
Filed: July 7, 1997)	
)	
For: Transaction System)	

Commissioner of Patents and Trademarks
Washington, D.C. 20231

REQUEST FOR WITHDRAWAL OF PREMATURE FINAL REJECTION

Sir:

Applicants respectfully request reconsideration of the finality of the rejection in the Office Action dated July 17, 2000. Applicants respectfully submit that the Final rejection should be withdrawn as it is legally improper. For example, a new ground of rejection was applied against unamended claims 38, 43, and 44 and the rejection was made Final.

In the Office Action dated March 7, 2000 claim 38 was rejected under 35 U.S.C. § 102(b) as being anticipated by Casale; claims 38, 43-44 were rejected under 35 U.S.C. § 102(b) as being anticipated by McClure; and claims 43-44 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Casale in view of McClure. In Applicants' Response filed May 11, 2000, claims 38, 43, and 44 were not amended. However, in the Office Action dated July 17, 2000 claims 38, 43, and 44 were finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Casale in view of Bustos and McClure.

MPEP 706.07(a) states:

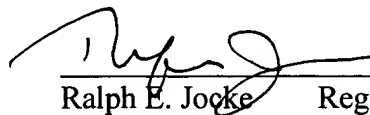
“Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant’s amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).”

Applicants respectfully submit that since claims 38, 43, and 44 were never amended, the new ground of rejection (Casale in view of Bustos and McClure) was not necessitated by amendment. Nor was the new ground of rejection based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c). Therefore, the Final rejection is premature.

Furthermore, because of the finality of the rejection in the Office Action dated July 17, 2000, Applicants have not been given an opportunity in accordance with 37 C.F.R. 1.111 to properly rebut the Office’s new ground of rejection.

Applicants respectfully submit that the finality of the Office Action dated July 17, 2000 should be withdrawn.

Respectfully submitted,



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Assistant Commissioner for Patents
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Attn: Art Unit 2713
Patent Examiner Tung Vo

Re: **Application Serial No.:** 08/889,033
Applicants: Bartholomew J. Frazzitta, et al.
Title: Transaction System
Docket No.: D-1083

Sir:

Please find enclosed Applicants' Request for Withdrawal of Premature Final Rejection for filing in the above case. No fee is deemed required. However, the Commissioner is authorized to charge any necessary fee associated with this Request and any other fee due to Deposit Account 04-1077.

Very truly yours,

Ralph E. Jocke
Reg. No. 31,029

CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this document and the documents indicated as enclosed herewith are being deposited with the U.S. Postal Service as Express Mail Post Office to addressee in an envelope addressed to Box Non-Fee, Assistant Commissioner for Patents, Washington, D.C. 20231 this 4th day of August 2000.

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